IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 703 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IQBALHUSSAN DAUDBHAI PAVARSI & 1 - Appellant(s)
Versus
ABDULRASUL H AHEMADHUSEN - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
NONE for Respondent No.1.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/09/2007

ORAL JUDGMENT

1. Heard Mr.Rajni H. Mehta, learned counsel for the appellants. None for the respondent No.1 though the names of Mr.S.V. Parmar and Mr.J.A. Shelat, learned counsel, are shown in the daily cause list.

2. The appellants, Insurance Company and owner-cum-driver of Truck No.GTH-7277, are before this Court with a submission that the tribunal erred in holding that the truck in question was involved in the accident and further erred in holding that the driver of the truck was 100% negligent and that the tribunal further erred in awarding a sum of Rs.1,04,200=00.

3. The claimant came to the tribunal with a submission that while he was driving his vehicle very slowly and moderately, the respondent No.1, driving the truck in question rashly and negligently, gave a dash to the car of the claimant, as a result of the accident, the claimant suffered fracture below his shoulder and also suffered number of injuries. He submitted that he was required to spend a sum of Rs.31,000=00 or more towards medical expenses and as he could not earn money which he was earning by going and coming back from Ahmedabad to Rajkot everyday and as his future earning is adversely affected, he was entitled to a sum of Rs.3,00,000=00.

4. The appellant No.1 submitted before the tribunal that his truck was not involved in the accident and he was being made a scapegoat. It was in the alternative submitted that the driver was not driving rashly and negligently and

there were no lapses on the part of the driver. The amount claimed by the claimant was also challenged. The Insurance Company as usual denied all their liability and submitted that they were not answerable to the claim made by the claimant.

5. The tribunal, after recording the evidence and hearing the parties, held that the truck in dispute was involved in the matter, the driver of the truck was 100% rash and negligent and that the claimant was entitled to a sum of Rs.1,04,200=00 with 12% interest from the date of the petition till realisation.
6. Mr.Rajni H.Mehta, learned counsel for the appellant, when was asked as to how could a joint appeal be maintainable, very fairly submitted that the name of the Insurance Company be deleted from the array of appellants and he be allowed to argue the matter on behalf of the driver-cum-owner of the truck.
7. The prayer made by Mr.Rajni H.Mehta is in accordance with law. It is accordingly allowed.
8. Let the name of the appellant No.2 be deleted from the array of the appellants. Office shall make necessary correction in the appeal memo within 10 days from today.
9. Mr.Rajni Mehta, learned counsel for the appellant after

taking me through the evidence and the findings recorded by the tribunal submitted that the facts would clearly show that the truck of the appellant was not at all involved in the accident. He submitted that the truck was sent to repair to one Bharat Radiator Works, Sarkhej, Ahmedabad and the fact even would be substantiated by statement of Rahimbhai and the bills which are available on the records at Ex.109.

10. True it is that the appellant made a statement before the Court that his uncle Rahimbhai had sent the truck for repairs to Bharat Radiator Works and this fact is corroborated by the statement of Rahimbhai, but unfortunately, this fact does not find place in the written statement filed by the appellant. The appellant simply stated that his truck was not involved in the accident, but he did not plead further as to where the truck was. The material fact that the truck was lying with Bharat Radiator Works was within the knowledge of the appellant and if, for the reasons best known to him and without giving any explanation, he does not mention the fact in the written statement, then, any tribunal would be entitled to draw adverse inference against the appellant. The tribunal, in the opinion of this Court, was justified in relying upon the

defence of the present appellant.

11. It is also to be seen from the statement of the claimant and his witness Lavjibhai Khodabhai Exh.92 who is running a hotel near the spot that the truck was being driven rashly and negligently and the driver of the truck was the author of the accident.

12. Being in general agreement with the findings recorded by the learned tribunal, I hold that the truck in dispute was involved in the accident and the driver of the truck was solely responsible for causing the accident.

13. So far as the question of compensation is concerned, the tribunal has found that the claimant's monthly income could be Rs.1800=00 per month and as he could not work for a period of about 12 months, he would be entitled to a sum of Rs.21,600=00. The tribunal also did not err in awarding medical expenses and under the head of future loss of income.

14. I find no reason to interfere, the appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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